

plan only because the merger or transfer involves a plan that has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, the actuarial valuation requirement under section 4231(b)(4) of ERISA and § 4231.3(a)(2) is satisfied only if an actuarial valuation has been performed for the plan based on the plan's assets and liabilities as of a date not earlier than the first day of the last plan year ending before the proposed effective date of the transaction. The valuation must separately identify assets, contributions, and liabilities being transferred and must be based on the actuarial assumptions and methods that are expected to be used for the plan for the first plan year beginning after the transfer.

**§ 4231.6 Plan solvency tests.**

(a) *In general.* For a plan that is not a significantly affected plan, the plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) is satisfied if—

(1) The expected fair market value of plan assets immediately after the merger or transfer equals or exceeds five times the benefit payments for the last plan year ending before the proposed effective date of the merger or transfer; or

(2) In each of the first five plan years beginning on or after the proposed effective date of the merger or transfer, expected plan assets plus expected contributions and investment earnings equal or exceed expected expenses and benefit payments for the plan year.

(b) *Significantly affected plans.* The plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) is satisfied for a significantly affected plan if all of the following requirements are met:

(1) Expected contributions equal or exceed the estimated amount necessary to satisfy the minimum funding requirement of section 412(a) of the Code (including reorganization funding, if applicable) for the five plan years beginning on or after the proposed effective date of the transaction.

(2) The expected fair market value of plan assets immediately after the transaction equal or exceed the total amount of expected benefit payments for the first five plan years beginning

on or after the proposed effective date of the transaction.

(3) Expected contributions for the first plan year beginning on or after the proposed effective date of the transaction equal or exceed expected benefit payments for that plan year.

(4) Expected contributions for the amortization period equal or exceed unfunded accrued benefits plus expected normal costs. The actuary may select as the amortization period either—

(i) The first 25 plan years beginning on or after the proposed effective date of the transaction, or

(ii) The amortization period for the resulting base when the combined charge base and the combined credit base are offset under section 412(b)(4) of the Code.

(c) *Rules for determinations.* In determining whether a transaction satisfies the plan solvency requirements set forth in this section, the following rules apply:

(1) Expected contributions after a merger or transfer must be determined by assuming that contributions for each plan year will equal contributions for the last full plan year ending before the date on which the notice of merger or transfer is filed with the PBGC. Contributions must be adjusted, however, to reflect—

(i) The merger or transfer,

(ii) Any change in the rate of employer contributions that has been negotiated (whether or not in effect), and

(iii) Any trend of changing contribution base units over the preceding five plan years or other period of time that can be demonstrated to be more appropriate.

(2) Expected normal costs must be determined under the funding method and assumptions expected to be used by the plan actuary for purposes of determining the minimum funding requirement under section 412 of the Code (which requires that such assumptions be reasonable in the aggregate). If the plan uses an aggregate funding method, normal costs must be determined under the entry age normal method.

(3) Expected benefit payments must be determined by assuming that current benefits remain in effect and that

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all scheduled increases in benefits occur.

(4) The expected fair market value of plan assets immediately after the merger or transfer must be based on the most recent data available immediately before the date on which the notice is filed.

(5) Expected investment earnings must be determined using the same interest assumption to be used for determining the minimum funding requirement under section 412 of the Code.

(6) Expected expenses must be determined using expenses in the last plan year ending before the notice is filed, adjusted to reflect any anticipated changes.

(7) Expected plan assets for a plan year must be determined by adjusting the most current data on fair market value of plan assets to reflect expected contributions, investment earnings, benefit payments and expenses for each plan year between the date of the most current data and the beginning of the plan year for which expected assets are being determined.

### § 4231.7 *De minimis* mergers and transfers.

(a) *Special plan solvency rule.* The determination of whether a *de minimis* merger or transfer satisfies the plan solvency requirement in § 4231.6(a) may be made without regard to any other *de minimis* mergers or transfers that have occurred since the last actuarial valuation.

(b) *De minimis merger defined.* A merger is *de minimis* if the present value of accrued benefits (whether or not vested) of one plan is less than 3 percent of the fair market value of the other plan's assets.

(c) *De minimis transfer defined.* A transfer of assets or liabilities is *de minimis* if—

(1) The fair market value of the assets transferred, if any, is less than 3 percent of the fair market value of all the assets of the transferor plan;

(2) The present value of the accrued benefits transferred (whether or not vested) is less than 3 percent of the fair market value of all the assets of the transferee plan; and

(3) The transferee plan is not a plan that has terminated under section 4041A(a)(2) of ERISA.

(d) *Value of assets and benefits.* For purposes of paragraphs (b) and (c) of this section, the value of plan assets and accrued benefits may be determined as of any date prior to the proposed effective date of the transaction, but not earlier than the date of the most recent actuarial valuation.

(e) *Aggregation required.* In determining whether a merger or transfer is *de minimis*, the assets and accrued benefits transferred in previous *de minimis* mergers and transfers within the same plan year must be aggregated as described in paragraphs (e)(1) and (e)(2) of this section. For the purposes of those paragraphs, the value of plan assets may be determined as of the date during the plan year on which the total value of the plan's assets is the highest.

(1) A merger is not *de minimis* if the total present value of accrued benefits merged into a plan, when aggregated with all prior *de minimis* mergers and transfers to that plan effective within the same plan year, equals or exceeds 3 percent of the value of the plan's assets.

(2) A transfer is not *de minimis* if, when aggregated with all previous *de minimis* mergers and transfers effective within the same plan year—

(i) The value of all assets transferred from a plan equals or exceeds 3 percent of the value of the plan's assets; or

(ii) The present value of all accrued benefits transferred to a plan equals or exceeds 3 percent of the plan's assets.

### § 4231.8 Notice of merger or transfer.

(a) *Filing of request—*(1) *When to file.* Except as provided in paragraph (f) of this section, a notice of a proposed merger or transfer must be filed not less than 120 days before the effective date of the transaction. For purposes of this part, the effective date of a merger or transfer is the earlier of—

(i) The date on which one plan assumes liability for benefits accrued under another plan involved in the transaction; or

(ii) The date on which one plan transfers assets to another plan involved in the transaction.